HIGH COURT OF UTTARAKHAND AT NAINITAL
(Court's order whether the case is or not approved for reporting)

Description of the case

S.A. No. 801 of 2001

(Old No. 148 of 2000)

Desh Rakshak Aushdhalaya P. Ltd.

**Vs.**

Union of India and others.

**Approved for reporting.**

Date of Decision: - 03-12-2007

Initial of Judge:

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**HIGH COURT OF UTTARAKHAND AT NAINITAL**

**SECOND APPEAL NO. 801 OF 2001**

(Old No. 148 of 2000)

Desh Rakshak Aushdhalaya (P) Ltd.,
Branch Office Kankhal,
Tehsil Haridwar,
District – Saharanpur. .....Plaintiff/Appellant.

Vs.

1. Union of India,
   through its General Manager,
   Northern Railway,
   Baroda House, New Delhi.
2. Chief Commercial Superintendent (Claims) of Northern Railway, Varanasi (U.P.).
3. Northern Railways,
   Through General Manager,
   Northern Railway,
   Baroda House, New Delhi. .....Defendant/Respondents.

Dated: 3.12.2007

**Hon'ble Rajesh Tandon, J.**

Heard Sri Pankaj Miglani, counsel for the appellant and Ms. Krishi Shukla, counsel for the respondents.

2. By the present Second Appeal filed under Section 100 of the Code of Civil Procedure, appellant has prayed for setting aside the judgment and decree dated 14.10.1999 passed by the II Additional District Judge, Saharanpur in First Civil Appeal No. 533 of 1987 Union of India Vs. Desh Rakshak Aushdhalaya (P) Ltd., whereby the aforesaid appeal was dismissed.

3. Briefly stated, a suit was filed by the plaintiff/appellant being Suit No. 83 of 1985 ***Desh Rakshak Aushdhalaya (P) Ltd. Vs. Union of India and others*** praying to the following effect:

> "(a) that a decree for payment of Rs. 35,000.00 as stated above, be kindly granted against the defendants and in favour of the plaintiff company named above.
>
> (b) That pendente lite and future interest at the rate of Rs. 12 per cent per annum till recovery of the aforesaid amount be kindly awarded to the plaintiff against the defendants.
>
> (c) That costs of the suit be awarded against the defendants to be paid to the plaintiff company."

4. According to the plaint, plaintiff/appellant is a private limited company duly incorporated under the provisions of Indian Companies Act and it has its registered office in the Union Territory of Delhi and its factory and Branch Office at Kankhal, which deals in manufactur of Ayurvedic medicines with Ayurvedic (country) Drugs etc. On 17.3.1982, the company purchased various Ayurvedic Drugs commonly known as country (curde)drugs from M/s Chamal Lal Neeraj Kumar, Majith Mandi, Amritsar with intention to use such drugs for the preparation of Ayurvedic Medicines as per the formulae described in the authoritative books of Ayurvedic and Siddha Systems of medicine and an invoice No. 455 dated 17.3.82 was also issued by M/s Chaman Lal in favour of the plaintiff company. The total cost of the aforesaid drug including all taxes, expenses and freight etc. was Rs. 30,171.43 paise, which the plaintiff paid to M/s Chaman Lal for the said drugs and as such, the aforesaid drugs were owned by the plaintiff company. As per instructions from the plaintiff company, M/s Chaman Lal dispatched the aforesaid goods contained in eleven packages

to be carried by the Railway from Amritsar Railway Station to Hardwar Railway Station (both the northern Railways) through Railway Receipt No. A 917755 dated 17th March, 1982 issued from the Amritsar Railway Goods Shed. M/s Chaman Lal made an endorsement on the said Railway Receipt instructing the Railways to deliver the said goods to its owner i.e. plaintiff company. Ordinarily, the goods dispatched from Amritsar should have taken about seven days' time to reach Hardwar in ordinary course. One Sri Kali Ram, an employee of the plaintiff company was deputed to take the delivery of the aforesaid goods on behalf of the plaintiff company. Kali Ram continued presenting the Railway Receipt to the Railway Authorities with effect from 22.3.1982 in order to demand delivery of the said goods, but due to negligence on the part of the defendants it never reached to the plaintiff company. Thereafter, the plaintiff company sent a statutory notice of claim for compensation as required under the provisions of Section 78B of the Indian Railways Act to the defendants on 22.5.1982, which was duly acknowledged by the defendant no. 2 vide his letter No. A 9/9394/6/22 dated 3rd June, 1982 and from time to time reminders were sent, but of no avail.

5. The Railway Authorities thereafter kept on assuring the plaintiff that they are trying to trace out the consignment and the same will be delivered to the plaintiffs as and when the same is traced. On 26th August, 1983, the plaintiff company received an intimation [NO. CCS/BSB, Case No. A 9/HW/9394/82 dated 26th August, 1983] from the Assistant Claims Inspector Lucknow Camp at Hardwar alleging that the aforesaid consignment has been traced out and is available at Railway Station Hardwar. As a consequence thereof, the representative of the plaintiff company went at the Railway Station the same day, but no verification in the presence of

A.C.I. concerned it was found that the consignment offered for delivery to the plaintiff company was entirely different from the one booked under the aforesaid Railway Receipt.

6. In view of the aforesaid, the defendants were liable to pay compensation to the tune of Rs. 30,171.43 paise for the costs of the goods so lost and an amount of Rs. 4,828.57 paise as interest over the aforesaid amount till the date of filing of this suit.

7. The defendants have contested the suit by filing a written statement stating therein in the additional pleas to the following effect:

> "5. यह कि वादी का यह कथन कि वादी ने दिनांक 17.3.1982 ई0 को एक फर्म मेसर्स चमन लाल नीरज कुमार मजीठ मण्डी अमृतसर से वादी ने विभिन्न प्रकार की औषधि आयुर्वेदिक औषधि बनाने हेतु खरी की थी और इस बाबत मैसर्स चमन लाल नीरजकुमार ने बिल नम्बर 455 दिनांकित 17.3.1982 वादी के हक में जारी किया तथा इन औशधियों की कीमत मय टैक्स खर्चा व भाडऋा आदि मुबलिग 36171 रूपया 43 पैसा था तथा जिकस कि वादी ने मैसर्स चमन लाल नीरज कुमार को भुगतान कर दिया था तथा मैसर्स चमन लाल नीरज कुमार ने उपरोक्त औषध्यिों ने वादी के नाम 11 पैकेज नजरिए रेल रसीद संख्या 917755 दिनांकित 17.3.1982 ई0 को प्रेषित कर दिये थे। गलत व खिलाफ वाकात है। मैसर्स चमन लाल नीरज कुमार ने जो माल रेलवे द्वारा प्रेषित किया था यह माल वादी द्वारा कथित माल से बिलकुल भिन्न है और जिस माल की बावत वादी ध्नराशि तलब कर रहा है इस प्रकार का कोई माल प्रेषित नहीं किया गया था लिहाजा वादी किसी प्रकार की दादरसी पाने का मुसतहक नहीं है तथा हाजा खारिज होने योग्य है। "

8. Further in the written statement, it has been stated that the plaintiff had booked the goods on 17.3.1982 and the goods should have reached the alleged station within seven days, but the suit has been filed on 31.8.1985, thus the suit is not maintainable as the same is barred by time.

9. On the pleadings of the parties, the court below has framed following issues:

> "(1) क्या वादी प्रतिवादीगण से 35,000/– रू0 की धनराशि प्राप्त करने का अधिकारी है ?
> (2) क्या वादी प्रतिवादीगण से उपरोक्त राशि पर ब्याज पाने का अधिकारी है यदि हाँ तो किस पर से।
> (3) क्या वाद वादी विधि व्यक्ति को ओर से प्रस्तुत नहीं किया गया है और नहीं सत्यापित किया गया है ?
> (4) क्या वाद में आवश्यक पक्षकारों के पक्ष न बनाये जाने का दोष है ?
> (5) क्या वादी का वाद कालावधि से बाधित है ?
> (6) क्या वाद में नोटिस अन्तर्गत धारा 78 बी रेलवे अधिनियम और धारा 80 जाब्ता दिवानी न दिये जाने से दोष विद्यमान है ?
> (7) अनुतोष ।"

10. While deciding the Issues No. 1 and 2 the trial Court has relied upon the Exhibit 1, Exhibit 2, Exhibit – 3, Exhibit 5 and Exhibit 6, Exhibit 7, Exhibit-8, Exhibit – 10, Exhibit – 11 and Exhibit 12, which support the case of the plaintiff. On behalf of the defendant no evidence has been adduced showing that no goods has been supplied to the plaintiff company, which was booked by the plaintiff and neither the sample of the goods, which was booked by the plaintiff has been produced in the Court. Relying upon the aforesaid documents, the plaintiff is not entitled to get any amount towards interest on the amount towards compensation as the amount is not a loan amount, but

the plaintiff company is entitled to get a sum of Rs. 30171.43/- towards compensation. Thus, aforesaid issues have been decided accordingly.

11. While deciding the Issue No. 3 a finding has been recorded to the following effect:

> "वादी ने कागज सं0 41 क पर फर्म के रजिस्ट्रेशन का प्रमाण पत्र पत्रावली पर दाखिल किया है और कागज सं0 42 ग 2 पर फर्म की प्रबन्धक समिति के आर्टिकलस आफ एसोसिएशन पत्रावली पर दाखिल किये हैं जिमें मैनेजिंग डायरेक्टर को वादी अपनी डायरेक्टर चुन सकते हैं और कंपनी की सील भी मैनेजिंग डाईरेक्टर के पास रहेगी तथा आर्टिकलस 47 के अनुसार मैनेजिंग डाईरेक्टर को किसी भी कागज पर हस्ताक्षर करने और कंपनी की सील लगाने का कंपनी की ओर से अधिकार है। प्रतिवादीगण की ओर इस तरह का कोई मौखिक साक्ष्य पत्रावली पर नहीं दिया गया है कि श्री पारस कुमार जैन की किसी प्रकार का वाद दायर करने का और सत्यापित करने का अधिकार नहीं है तद्नुसार वादी कम्पनी के मेमोरेंडम और आर्टिकल्स आफ एसोसिएशन के अनुसार भी पारस कुमार जैन को वाद दायर करने का और सत्यापित करने का अधिकार है। अतः ऐसी स्थिति में यह वाद बिन्दु नकारात्मक रूप में निर्धारित किया जाता है।

12. As will appear form the aforesaid, the trial Court has recorded a finding that the Managing Director of the Company is fully authorized to file the suit on behalf of the company as well as to attest the documents, thus, the issue has been decided in negative.

13. While deciding the Issue as to whether the suit is time barred, the trial Court has recorded a finding that the suit is not time barred as the reply to his letter has been given on 14.8.1984 and the period will start from that date. Further

reliance has been placed on AIR 1962 SC 1716. Thus, the issue has been decided in negative.

14. While deciding the issue with regard to non-service of notice, the trial Court has recorded a finding that the plaintiff has given notice under Section 78 B of the R.B. Act under Section 80 of the Code of Civil Procedure. Thus, this issue has been decided in negative.

15. While deciding the issue with regard to relief, the trial Court has recorded the finding that the plaintiff is entitled to get Rs. 30,171.43 paise, but he will not be entitled to get any compensation on that account.

16. The trial Court has decreed the suit of the plaintiff on 26.3.1987.

17. Against the said order, the defendant went in appeal being Civil Appeal No. 533 of 1987, which was allowed by the Appellate Court on 14.10.1999 by recording a finding to the following effect:

> "The learned counsel for the appellant also submitted that the suit is barred by time and submitted that the goods was booked at Amritsar railway station on 17.3.82 and as per admission of the plaintiff the goods should have reached the destination within 7 days, but the suit was filed on 31.8.85. Hnece the suit is time barred. He referred the principle laid down in AIR 1977 M.P. 198 M/s J.P. Madhya Pradesh Transport Company vs. M/s Mukesh Trading Co. Laksar where it was held that "it is clear from the language of Art. 10 that is would apply only to a case

where compensation is claimed for losing or injuring the goods whereas Art. 11 covers cases of non delivery of goods for whatever reason. Article 11 applies to a case where the bulk of the goods had been delivered and only part remained to be delivered. Further, the starting point of limitnation is not the dat eof service, but it is the date on which the goods ougt to be delivered." The learned counsel also referred the principle laid dwon in Current Civil Cases 1988 Page 200 M/s National Coal Development Corporation Vs. Union of India and another where it was held that:

"Section 9 of the Limitation Act embodied the principles that once the time for filing suit or application starts running, it will continue to run till it has exhausted the full prescribed period sub-section (2) of Section 15 of the Limitation Act deals with exclusion of period of statutory notice. Such as those u/s 80 of the C.P.C. The proper way to look after matter is to take complete two months next after delivery or service of notice. The General period of limitation in this type of suit is 3 years under Article 10 of Limitation Act. In absence of anything otherwise, ordinarily, the date of deliver to the party should be taken as the starting point of limitation."

18. The lower appellate court has further recorded a finding that the status of the plaintiff was neither the consignor nor the consignee, therefore, he does not hold the title in the goods as the R.R. is a document of title thereof. It has further been recorded that the plaintiff cannot file the suit and the suit is not maintainable as the Managing Director of the plaintiff Company has not appeared in the Court who has filed the suit. Further the person Kali Ram who has been held to be

authorized to take delivery of the goods has not appeared before the trial Court. A finding has further been recorded that the suit should have been filed either by the consignor or Consignee.

19. In this connection, it is also to be mentioned over here that this suit was provisionally registered because when the suit was filed by the plaintiff in the court of learned District Judge, Saharanpur, the office had reported that the suit is time barred and the learned District Judge decided this matter observing that the suit is prima facie within time subject to the objection which the defendants may subsequently raise with regard to limitation, this suit is provisionally registered and after going through the entire evidence on record I come to the conclusion that the suit is barred by time.

20. In view of the above discussion, I find that the suit was not maintainable as the same has neither been filed by the Consigner nor the Consignee, but the same has been filed by an agent, who was not authorized to file the same and the judgment and decree passed by the lower appellate need no interference and present Second Appeal deserves to be dismissed.

21. Consequently, Second Appeal is dismissed. No order as to costs.

(Rajesh Tandon, J.)

3.12.2007

*Rathour*